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MAILED
AUG 02 2011
OFFICE OF PETITIONS

In re Application of	:	DECISION ON REQUEST
John Voellmicke	:	FOR RECONSIDERATION OF
Patent Number: 7,909,833	:	PATENT TERM ADJUSTMENT
Issue Date: 03/22/2011	:	and
Application No. 10/673826	:	NOTICE OF INTENT TO ISSUE
Filing or 371(c) Date: 09/29/2003	:	CERTIFICATE OF CORRECTION
Attorney Docket Number:	:	
DEP-5164	:	

This is a decision on the petition filed on filed May 20, 2011, which is being treated as a petition under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by sixty-five (65) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by sixty-five (65) days is **GRANTED to the extent indicated herein.**

Patentees provide that this Office errantly calculated a reduction of 120 days in connection with the filing of a "Disclosure letter," after the mailing of the Notice of Allowance, and with payment of the issue fee. Applicants note that the disclosure letter is not a basis for reduction.

A review of Office records confirms that applicants filed a "Disclosure Letter Patent Term Adjustment Determination 37 CFR 1.705," in compliance with applicant's duty of good faith and candor, on July 1, 2010, along with the payment of the issue fee. The file history confirms that the Disclosure Letter was filed in compliance with applicant's duty of good faith and candor. A review of the application history further confirms that the Disclosure Letter was not otherwise filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The period of reduction of 120 days entered for the filing of the Disclosure Letter is not warranted and is being removed.

Office records also confirm that the Office erred in calculating a reduction in connection with the filing of reply to a Restriction Requirement on April 8, 2005, after filing an Amendment on March 11, 2005. The Restriction Requirement was mailed on March 31, 2005, and the reply was

timely filed on April 8, 2005. The reduction pursuant to 37 CFR 1.704(c)(7) is in error and has been removed.

A further review of the application file history reveals that Office also erred in calculating the reduction in connection with the abandonment of the application. Office records confirm that a petition to revive the application was granted in a Decision on petition mailed September 25, 2009. Pursuant to 37 CFR 1.704(c)(3), the period of delay begins on the date of abandonment – the day after the date on which the reply to the Office action was due, i.e. January 7, 2008 – and ending on the earlier of (i) the date of mailing of the decision reviving the application (i.e. September 25, 2009) or (ii) the date that is four months after the date the grantable petition to revive the application was filed (i.e. January 10, 2010). The period of reduction pursuant to 37 CFR 1.704(c) beginning on the date of abandonment of the application, January 7, 2008, and ending on the date of mailing of the decision reviving the application, September 25, 2009, is 628 days. A reduction of 628 days pursuant to 37 CFR 1.704(c)(3), is properly assessed to Patentees.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by zero (0) days (adjustments of 479 days (141 days + 133 days + 122 days + 83 days) less reductions of 780 days (53 days + 99 days + 628 days)).

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,909,833 B2

DATED : March 22, 2011

INVENTOR(S) : Voellmicke

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 50 days.

Delete the phrase "by 50 days" and insert – by 0 days--